

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: DMCA Subpoena to Facebook, Inc.

Case No. 7:18-mc-00471-CS

DECLARATION OF JOHN K. ROCHE

I, John K. Roche, hereby declare as follows:

1. I am a partner at Perkins Coie LLP, counsel for Facebook, Inc. (“Facebook”). The following facts are true based on my personal knowledge or information and belief based upon my review of the case file.
 2. On November 6, 2018, Facebook’s registered agent in New York received a subpoena (the “Subpoena”) from Watch Tower Bible and Tract Society of Pennsylvania (“Watch Tower”), a true and correct copy of which is attached hereto as Exhibit 1. The Subpoena sought non-content identifying information for the “Facebook account displaying the name, ‘Jose Antonio Gutierrez Garcia (Gran Muchedumbre)’, and any logs of Internet Protocol addresses including time stamps used to access the subject account or to upload the artwork available at [three specified] URLs[.]” The Subpoena listed contact information for Watch Tower’s counsel, Paul Polidoro, in small type at the bottom. Mr. Polidoro’s email address was underlined, thereby obscuring the fact that the domain for his email address begins with the letter “j” rather than the letter “i.”
 3. On November 9, 2018, Facebook emailed a letter containing written objections to the Subpoena to the email address ppolidor@iw.org, a true and correct copy of which is attached hereto as Exhibit 2. Facebook’s objections explained that the Court lacked subpoena power over

California-based Facebook, and that Facebook responds to otherwise unobjectionable subpoenas for non-content information that uniquely identify an account by URL or email address after providing 21-days' notice to the affected account holder. Mr. Polidoro, however, presumably never received Facebook's objections because his correct email address is ppolidor@jw.org. Facebook unfortunately has not located any record of receiving a rejection notice of this email, and therefore was unaware that the email had been sent to the wrong email address.

4. On December 27, 2018 and January 10, 2019, Facebook received letters from Melanie Jean-Noel by certified mail to its California headquarters indicating that Watch Tower had not received any response from Facebook regarding the Subpoena.

5. On January 11, 2019, Facebook mailed a copy of its November objection letter to Ms. Jean-Noel.

6. On January 31, 2019, Facebook received an email from Mr. Polidoro attaching a copy of the Court's Order to Show Cause.

7. On February 11, 2019, I spoke with Ms. Jean-Noel by phone and explained that Facebook's initial objections appeared to have been misdirected to the wrong email address due to a typo, but that a copy was sent to her on January 11, 2019. Ms. Jean-Noel notified me that she did not receive Facebook's objections sent by mail on January 11, 2019. I explained that, as stated in Facebook's objection letter, because names are not unique identifiers for Facebook accounts, Facebook can only respond to subpoenas that uniquely identify accounts by URL or email address. Facebook therefore could not comply with the original subpoena identifying the account at issue as "Jose Antonio Gutierrez Garcia (Gran Muchedumbre)." I requested that Ms. Jean-Noel issue an amended subpoena that identified the account by URL, for which I could accept service by email. Ms. Jean-Noel agreed, and that same day emailed me an amended

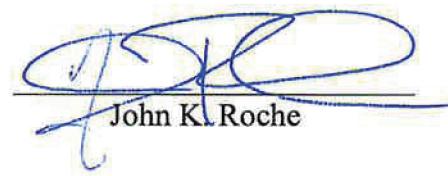
subpoena (the “Amended Subpoena”), a true and correct copy of which is attached hereto as Exhibit 3, identifying the account by the URL <https://www.facebook.com/GRANMUCHEDUMBRE> (the “Account”). Under the circumstances of this case and in order to meet the deadlines set by the Order to Show Cause, I notified Ms. Jean-Noel that Facebook would waive its objections to subpoena power and agree to provide 14 rather than the usual 21-days’ notice to its account holder.

8. On February 11, 2019, my firm sent an email to the email addresses associated with the Account that attached a copy of the Amended Subpoena. The email notified the account holder that Facebook would produce responsive non-content identifying information if the account holder did not file papers with the Court within 14 days objecting to the Amended Subpoena.

9. My firm is in possession of preserved non-content identifying information for the Account responsive to the Amended Subpoena.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: February 20, 2019


John K. Roche